IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY THIRD DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE D.S.R.VARMA

WRIT PETITION NO : 29378 of 1995

Between:

B.Buchi Reddy, S/o. Thamma Reddy, aged 53 years,

R/o.Manganoor Village, Bijanapalli Mandal,

Mahaboobnagar District.

..... PETITIONER

AND

1.The Government of A.P., rep., by its Secretary, Panchayat Raj

Rural Development, Secretariat, Hyderabad.

2.The District Collector (Panchayat Wing),

Mahaboobnagar District.

3.The M.R.O., Bijanapalli Mandal,

Mahaboobnagar District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus directing the 2nd respondent to conduct a fresh enquiry with regard to utilization of Jawahar Rojgar Yojana funds by the petitioner and by duly declaring the order passed by the 1st respondent vide Proc.G.O.Rt.No.1878, dated 02-11-1995 and consequential Notice issued by the 4th respondent vide No.E/3922/95, dated 27-11-1995 basing on the orders passed by the 2nd respondent vide Proc.No.A2/4970/94-2, dated 22-07-1995 and Notification issued vide ROC

No.A2/4970/94, dated 22-07-1995 as illegal, arbitrary and violative of the provisions of the Panchayat Raj Act, 1994.

Counsel for the Petitioner: Sri V.Ravi Kiran Rao

Counsel for the Respondent Nos.1 to 3: G.P. for Panchayat Raj.

The Court made the following:

ORAL ORDER:

Heard both sides.

2. This writ petition is directed against the G.O.Rt.No.1878, dated 02-11-1995, issued by the Secretary, Government of Andhra Pradesh/1st respondent and the consequential Notice No.E/3922/95, dated 27-11-1995, issued by the Mandal Revenue Officer, Bijanapalli Mandal/4th respondent basing on the orders passed by the District Collector/2nd respondent in proceedings No.A2/4970/94-2, dated 22-07-1995, and the Notification issued vide ROC No.A2/4970/94, dated 22-07-1995, as illegal, arbitrary and violative of the provisions of the Panchayat Raj Act, 1994.

3. The facts, in brief, are that the petitioner while working as Sarpanch of Manganoor village was allegedly involved in certain

financial irregularities. A show-cause-notice in ROC.No.A2/4970/1994, dated 08-01-1995, was issued by the 2nd respondent under sub-section (2) of Section 265 of the A.P. Panchayat Raj Act, 1994 (for brevity 'the Act').

4. Subsequently, a notification had been issued by the second respondent vide ROC.No.A2/ 4970/ 94, dated 22.07.1995, removing the petitioner from the post of Sarpanch. Aggrieved by the same, an appeal had been preferred by the petitioner and the Government eventually passed the impugned G.O.Rt.No.1878, dated 02-11-1995. Hence, the present writ petition.

5. It is to be seen from the record that a show cause notice, dated 08.01.1995, was issued by the 2nd respondent under sub-section (2) of Section 265 of the Act.

6. Now, it is necessary to refer to the provisions of sub-sections (1) and (2) of Section 265, which reads thus:

"Section 265: Liability of Sarpanch, President, Chairperson" etc., for loss, waste or misapplication of property:-

1. If, after giving the Sarpanch, Upa-Sarpanch, President, Vice-President, "Chairperson", Vice-Chairperson" or the executive authority, the Mandal Parishad Development Officer, the Chief (Executive Authority) an opportunity of showing cause to the contrary, the Commissioner is satisfied that the loss waste or misapplications of any money or other property owned by or vested in the gram Panchayat, Mandal Parishad, or as the case may be the Zilla Parishad is a direct consequence of misconduct or gross neglect, on the part of such person, the Commissioner may, by order in writing, direct such person to pay to the gram Panchayat, Mandal Parishad or as the case may be, the Zilla Parishad before the date fixed by him, the amount required to reimburse it for such loss, waste or mis-application, unless

such person proves that he had acted in good faith.

2. If the amount is not so paid, the Commissioner shall cause it to be recovered as arrears of land revenue and credited to the fund of the Gram Panchayat, Mandal Parishad or as the case may be, Zilla Parishad.

7. From a bare reading of the said provision, it is clear that the procedure contemplated under sub-section (1) of Section 265 of the Act has to be followed before passing the orders under sub section (2) of Section 265 of the Act.

8. In other words, a show-cause-notice has to be given, an enquiry has to be conducted and the competent authority has to arrive at a finding that there was misappropriation or irregularity in financial matters and in such a case, quantification has to be made and then pass appropriate orders, directing the incumbent to reimburse or to repay the loss caused to the Panchayat.

9. Sub-section (2) of Section 265 of the Act postulates that if such an amount fixed under sub-section (1) of Section 265 of the Act is not paid, the same can be recovered by applying the provisions of the Revenue Recovery Act.

10. In the instant case, though a notice has been issued under sub-section 2 of Section 265 of the Act, the order of removal was issued by the 2nd respondent through proceedings dated 22-07-

1995. But, the intrigue aspect while passing an order under Sub-section 1 (ii) of Section 249 of the Act, removing the petitioner from the post of Sarpanch, had referred to the show cause-notice issued under sub-section (2) of Section 265 of the Act. Both these actions i.e., show cause notice to repay the amount and removal of the petitioner from service cannot go together under Section 249 of the Act.

11. In other words, the recovery of money and removal can be effected by two different independent provisions i.e., sub-sections 1 and 2 of Section 265 and Section 249 of the Act respectively.

12. As already pointed out, the notice caused to be issued was under sub-section (2) of Section 265 of the Act and the order of recovery and removal together were passed by exercising the jurisdiction under Section 249 of the Act.

13. If viewed it from a different angle, the genesis of removal was the show cause notice issued under sub-section (2) of Section 265 of the Act. The imposition of both the penalties i.e., recovery of the amount and removal cannot be brought under the purview of one provision.

14. From a reading of the orders of the 2nd respondent and the orders of the Government in the impugned G.O., it could be seen that both these aspects i.e., recovery of money and removal were mixed

up despite the fact that the petitioner had offered an explanation to the show cause notice issued under sub-section 2 of Section 265 of the Act.

15. Apparently, in my considered view, no enquiry, as has been postulated under sub-section (1) of Section 265 of the Act, was ever conducted before passing an order under sub-section (1) of Section 265 of the Act.

16. Apart from the laches already pointed out that the same was made basis for both the recovery of money and also removal of the petitioner from the post of Sarpanch.

17. At this stage, the learned counsel appearing on behalf of the petitioner submits that in view of the long lapse of time, the petitioner is not challenging the orders of the Government in the impugned G.O.Rt.No.1878, dated 02.11.1995, insofar as it relates to the removal of the petitioner is concerned.

18. For the foregoing reasons, the writ petition is allowed in part, and the impugned G.O.Rt.No.1878, dated 02-11-1995, issued by the Government is set aside insofar as it relates to the removal of the petitioner from the post of Sarpanch is concerned with the following directions:

“The respondents are directed to follow the procedure prescribed under sub-section (1) of Section 265 of the Act insofar as it relates to the recovery of the alleged financial irregularity is

concerned, from the date of receiving the show cause notice issued under sub-section (2) of Section 265 of the Act, which in fact has to be treated as a show cause notice issued under sub-section (1) of Section 265 of the Act, and conduct an enquiry and only after satisfying with regard to financial irregularities and the quantification thereof, the procedure prescribed under sub-section (2) of Section 265 of the Act in accordance with law.

However, there shall be no order as to costs.

23RD SEPTEMBER 2004 D.S.R.VARMA, J

KVR/KRK

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday the 23rd day of September, Two Thousand and Four.

To:

1.The Secretary, Government of Andhra Pradesh, Panchayat Raj and

Rural Development, A.P., Secretariat, Hyderabad.

2.The District Collector (Panchayat Wing), Mahaboobnagar District.

3.The Mandal Revenue Officer, Bijanapalli Mandal, Mahaboobnagar District.

4.Two C.Cs. to the G.P. for Panchayat Raj, AP High Court Buildings, High Court of A.P., Hyderabad. (OUT)

5.Two C.D. Copies.

THE HONOURABLE SRI JUSTICE D.S.R.VARMA

WRIT PETITION No. 29378 Of 1994

23RD SEPTEMBER 2004